IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8772 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHALAXMI SALT UTPADAK SAHAKARI MANDLI LTD

Versus

STATE OF GUJARAT

Appearance:

MR HASIT H. JOSHI FOR MR VH DESAI for Petitioner No. 1

MR UR BHATT, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/09/2001

ORAL JUDGEMENT

The petitioner is a cooperative society formed by 'Agarias' belonging to the weaker section of the society. The petitioner was formed with a view to promoting manufacture of salt. The petitioner sought registration and in the meantime, simultaneously, approached the Collector, Kutch to grant lease in respect of 105 acres of land of Village Kadana. The Collector, Kutch vide his letter dated 1st November, 1977 directed the petitioner

to seek licence to manufacture salt from the Salt Commissioner, Jaipur. Further in the said letter the petitioner was informed that its application was forwarded to the Mamlatdar, Anjar for taking necessary action in the matter. It appears that thereafter various letters were exchanged with the Revenue Officer and the petitioner's request to District Land Records Inspector to carry out survey of land bearing old survey No.228 and new survey No.115/1 of Village Kadana was acceded to and after carrying out a survey, a map in respect of the said land was prepared and handedover to the petitioner. In consequence, the Mamlatdar, Anjar vide his letter dated 11th April, 1986 granted no objection certificate. The petitioner-society was duly registered on 15th June, 1987.

2. It seems that while the application on behalf of the petitioner was pending before the Collector, Kutch, one Shri Saghaya Menand Ahir and four others made an application for lease of the very same land. Similarly, one more person, namely, Velji Devdhan also applied for grant of lease in respect of the said land. The applications of the aforesaid parties were rejected by the Collector, Kutch on 20th December, 1988 and both the parties filed separate revision applications before the respondent. Pending hearing of the aforesaid revision applications, the respondent-authority by way of interim relief made an order to the effect that in case the Collector, Kutch was to grant lease of the disputed portion of the land, he should obtain prior permission of the Government.

3. On 31st January, 1990, the Collector, Kutch sanctioned a lease in respect of 41 acres of land for a period of 10 years commencing from 31st July, 1990. However, in relation to the balance 60 acres of land, the Collector observed that as the said lands were under stay orders issued by the respondent, further orders would be passed by the Collector upon disposal of the revision applications pending before the respondent-authority. While passing the aforesaid order on 31st January, 1990, the Collector also took into consideration the Government Resolution dated 31st December, 1981 by which it was decided by the Government that for the purpose of manufacturing salt, land less than 100 acres should not be allotted as it would not be an economically viable proposition.

4. In pursuance of the order made by the Collector, the petitioner was put in possession of 41 acres of land and the sanad was granted to the petitioner. The

petitioner had also executed a lease on 19/2/1990 incorporating terms and conditions of the grant. The petitioner also incurred expenditure to the extent of Rs.3,14,000/- in getting lands levelled, drilling a bore for supply of water, construction of bunds, tank and platform, etc. so as to carry out the salt manufacturing activities.

5. The petitioner also deposited Rs.13,020/- with the Gujarat Electricity Board for supplying an electric connection.

6. In light of the aforesaid facts and developments, the petitioner approached the respondent with a revision application dated 17/2/1990 praying that the Collector be directed to allot the balance 60 acres of land and appropriate permission for the same may be granted to the Collector.

7. The appropriate authority instead of dealing with the request made by the petitioner issued notice wherein he proposed to hear the petitioner to show cause as to why the order of the Collector should not be cancelled and the land in question be resumed. After hearing the petitioner, the impugned order dated 29th October, 1990 (Annexure 'A') was made wherein it was ordered that the order dated 31st January, 1990 made by the Collector, Kutch be cancelled.

8. Heard Mr.Hasit H.Joshi, learned Advocate for the petitioner and Mr.U.R.Bhatt, learned A.G.P.

9. The respondent - authority while dealing with the contention on behalf of the petitioner that the petitioner has already incurred huge expenditure has stated that once the order of the Collector was subject to revisional proceedings if the petitioner incurred any expenditure, the State Government should not be held liable for the same. It is further stated that in case the Collector has issued sanad or carried out any other acts in consequence thereof, they will all be subject to provisions of Section 211 of the Bombay Land Revenue Code and such acts on the part of the Collector cannot be treated as promissory estoppel against the Government. Furthermore, it is held that as the decision of the Collector is against declared policy of the Government such an order cannot be upheld.

10. Mr.Bhatt, learned AGP has reiterated the reasons which weighed with the respondent - authority and submitted that if the order of the Collector is in

violation of the policy of the Government, the authority was justified in cancelling the same.

11. Having gone through the order of the Collector (Annexure 'E') it is found that, the Collector was not only aware of the policy of the Government but has specifically taken resolution dated 31st December, 1981 into consideration and recorded that under normal circumstances it would not be possible to allot land of an area admeasuring less than 100 acres. The Collector further goes on to record that as the balance 60 acres of the land is under consideration in revisional proceedings, it is not possible to grant lease of the said portion of land "at present". He further goes on to state that the decision as regards 60 acres of land shall be made after receipt of the orders of the respondent before whom the revisional proceedings are pending.

12. Thus, the basic contention on which the respondent - authority has cancelled the order, namely, violation of the policy of the Government cannot be said to be a valid ground, in as much as the Collector was aware of the said position and has passed a conditional order to this effect. In fact, it was against this conditional order that the petitioner had made the revisional application before the respondent and the respondent was required to deal with the said aspect of the matter instead of cancelling allotment of 40 acres of land.

13. In light of the aforesaid facts and circumstances it would be in the interest of justice that the petitioner is relegated before the respondent-authority with a direction to the respondent-authority to hear the revision afresh. The impugned order dated 29th October, 1990 (Annexure 'A') is hereby set aside and the respondent-authority is directed to hear the petitioner on the revision made by the petitioner before it on 17th February, 1990. The respondent-authority shall bear in mind the following factors while arriving at a decision :

(1) The petitioner has already been granted sanad.
(2) The petitioner has executed the lease deed.
(3) The petitioner has already incurred expenditure in furtherance of its object to carry out salt manufacturing activities.
(4) The petitioner is a cooperative societies of "Agarias" i.e. self-employed persons and is not an industry like a limited company.
(5) As stated by the advocate of the petitioner, the land has not been resumed and has remained in

possession of the petitioner till date.

14. The respondent-authority is directed to pass an order within a period of eight weeks from the date of the receipt of the writ or a certified copy of this order, whichever is earlier.

The petition is accordingly disposed of in the aforesaid terms. Rule is made absolute to the aforesaid extent with no order as to costs.

(D.A.Mehta, J)

'Bhavesh'